

TITLE 329 SOLID WASTE MANAGEMENT BOARD

DRAFT RULE
#05-234(SWMB)

DIGEST

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329 IAC 18

DRAFT RULE

SECTION 1. 329 IAC 18 IS ADDED TO READ AS FOLLOWS:

ARTICLE 18. VOLUNTARY PERFORMANCE BASED LEADERSHIP PROGRAMS

Rule 1. Environmental Stewardship Program and Comprehensive Local Environmental Action Network Community Challenge Program

329 IAC 18-1-1 Applicability

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3

Affected: IC 13-15; IC 13-19

Sec. 1. (a) The Indiana Environmental Stewardship Program and Comprehensive Local Environmental Action Network Community Challenge Program are voluntary performance based leadership programs that offer recognition, regulatory flexibility, and an opportunity to work directly with the department on innovative pilot projects for entities that consistently demonstrate environmental stewardship and make measurable efforts towards continual environmental improvement. In accordance with IC 13-27-8-3, an entity is not required to comply with this rule except as a provision of participation in these programs.

(b) This rule applies to any Indiana entity that:

(1) voluntarily participates in either program;

(2) meets the eligibility requirements of section 3 of this rule; and

(3) maintains membership by complying with this rule.

329 IAC 18-1-2 Definitions

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3

Affected: IC 13-15; IC 13-19

Sec. 2. In addition to the definitions in IC 13-11-2, the following definitions apply throughout this rule:

- (1) “Commissioner”,** as defined in IC 13-11-2-35(a), means the commissioner of the department of environmental management.
- (2) “Comprehensive Local Environmental Action Network Community Challenge Program” or “CLEAN”** means the voluntary state program for units of local government in Indiana that:
 - (A)** demonstrate environmental stewardship; and
 - (B)** strive for continual environmental improvement.
- (3) “Department”,** as defined in IC 13-11-2-51, means the Indiana department of environmental management.
- (4) “Entity”** means a company, corporation, firm, enterprise, authority, institution, partnership, sole proprietorship, limited liability company, any person as defined in IC 13-11-2-158(a), or unit of local government, or part or combination thereof, whether incorporated or not, public or private, that has its own functions and administration. Except as described in section 4(c) of this rule, an entity has one (1) geographic location under:
 - (A)** at least one EMS; and
 - (B)** the direction of senior management.
- (5) “Environmental aspect”** means an element of the activities, products, or services of an entity that has the potential to interact with the environment.
- (6) “Environmental impact”** means any change to the environment, whether adverse or beneficial, wholly or partially resulting from the environmental aspects of an entity.
- (7) “Environmental laws, rules, and regulations”,** for the purpose of this article, means the system of laws and standards administered by U.S. EPA, the department, or related local government bodies.
- (8) “Environmental management system” or “EMS”** means a continuous cycle of planning, implementing, reviewing, and improving a set of documented processes and practices used to develop and implement the environmental policy and manage the environmental aspects of an entity to:
 - (A)** maintain compliance;
 - (B)** reduce adverse environmental impacts; and
 - (C)** increase operational efficiency.
- (9) “Environmental objective”** means an environmental goal that is consistent with the environmental policy of an entity.
- (10) “Environmental policy”** means the overall commitment and direction of an entity related to environmental performance as formally expressed by senior management.
- (11) “Environmental Stewardship Program” or “ESP”** means the voluntary state

program for entities in Indiana that:

- (A) demonstrate environmental stewardship; and**
- (B) strive for continual environmental improvement.**
- (12) “Environmental target” means a detailed performance requirement that:**
 - (A) is quantified where practical; and**
 - (B) arises from the environmental objectives.**
- (13) “Geographic location,” for the purposes of this article, means an aggregation of one (1) or more operations that are:**
 - (A) located on:**
 - (i) one (1) piece of property; or**
 - (ii) contiguous or adjacent properties; and**
 - (B) owned, operated, or controlled by the same entity.**
- (14) “Independent audit” means an audit conducted by a party that:**
 - (A) is not directly employed by the entity being audited; and**
 - (B) has not played a substantive role in implementing the EMS being audited.**
- (15) “National Environmental Performance Track Program” or “NEPT” means the U.S. EPA’s National Environmental Performance Track Program.**
- (16) “Senior management” means the following:**
 - (A) For entities, the individual or individuals with executive responsibility for the entity.**
 - (B) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.**
 - (C) For a unit of local government or other governmental unit, either a principal executive officer or ranking elected official.**
- (17) “U.S. EPA” means the administrator of the United States Environmental Protection Agency or the administrator’s designee.**

(Solid Waste Management Board; 329 IAC 18-1-2)

329 IAC 18-1-3 Eligibility criteria

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3

Affected: IC 13-15; IC 13-19

Sec. 3. Participation in ESP or CLEAN is voluntary and is open to entities located and operating in Indiana that meet the following criteria:

- (1) The standard of environmental compliance as described in section 10 of this rule.**
- (2) Implement and maintain an EMS as described in section 11 of this rule.**
- (3) Conduct continuous environmental improvement initiatives as described in section 12 of this rule.**

(Solid Waste Management Board; 329 IAC 18-1-3)

329 IAC 18-1-4 Membership application

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3

Affected: IC 13-15; IC 13-19

Sec. 4. (a) A member of senior management shall submit an application, preferably electronically, by one (1) of the following methods:

- (1) For applications for either ESP or CLEAN only, to the department on:**
 - (A) a form, whether electronically or hard copy, provided by the department;**
 - or**
 - (B) an equivalent form.**
- (2) For applications for both ESP and NEPT, to U.S. EPA, electronically on the form provided by U.S. EPA. An application submitted to U.S. EPA satisfies the requirement for an application to the department for ESP.**

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and**
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.**

(c) A membership for an entity shall be limited to cover one (1) geographic location, except that an entity may apply for membership as a group of locations if the following criteria are met:

- (1) Each location must meet the eligibility criteria individually and as a group, including the requirement to identify environmental improvement initiatives.**
- (2) The environmental improvement initiatives may be similar or the same for all of the locations, but each location must:**
 - (A) play an active role in each initiative; and**
 - (B) demonstrate continuous environmental improvement.**
- (3) The EMS must address staff and activities at each location.**
- (4) Senior management must be common to all locations.**
- (5) The standards of environmental compliance in section 10 of this rule shall apply to all Indiana locations under the control of the entity.**

(d) The commissioner shall make a determination on acceptance into ESP or CLEAN based on the following:

- (1) The EMS must meet the standards in section 11 of this rule.**
- (2) A site visit by a representative of the department to provide an understanding of the environmental aspects of the entity and the EMS.**
- (3) Identification of environmental improvement initiatives and associated objectives and targets as follows:**
 - (A) For ESP applicants, at least one (1) environmental improvement initiative and associated objectives and targets for the first year of membership.**
 - (B) For CLEAN applicants, at least five (5) environmental improvement initiatives and associated objectives and targets for the three (3) year term of membership.**
- (4) For ESP applicants, information provided to U.S. EPA if the entity has also applied for membership in NEPT.**

(5) Compliance audits conducted by:

- (A) the department;**
- (B) the U.S. EPA;**
- (C) other state offices; and**
- (D) other federal agencies;**

as appropriate.

(6) Other information, including the following:

- (A) Compliance information obtained from department staff.**
- (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.**

(Solid Waste Management Board; 329 IAC 18-1-4)

329 IAC 18-1-5 Term of membership

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3

Affected: IC 13-15; IC 13-19

Sec. 5. (a) The term of membership is three (3) years from the date the entity is accepted into the program as long as the entity continues to meet the program criteria and submits the annual summary.

(b) For ESP members, the department may extend the term for up to one (1) year to:

- (1) coincide with the membership date in NEPT, if applicable; or**
- (2) coincide with the annual summary submission by allowing a member whose expiration date occurs prior to April 1 of that year to extend its expiration date to April 1 of that year.**

(c) For CLEAN members, the department may extend the term for up to ninety (90) days to accommodate submission of the third annual summary, at which time CLEAN members may seek to renew membership in the program. *(Solid Waste Management Board; 329 IAC 18-1-5)*

329 IAC 18-1-6 Renewal of ESP membership

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3

Affected: IC 13-15; IC 13-19

Sec. 6. (a) To renew ESP membership, a member of senior management shall submit a renewal application, preferably electronically, by April 1 of the third year of membership as follows:

(1) For renewal applications for ESP only, to the department on:

- (A) a form, either electronically or hard copy, provided by the department;**
- or**
- (B) an equivalent form.**

(2) For renewal applications for both ESP and NEPT, electronically to U.S. EPA on the form provided by U.S. EPA.

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) The department shall review the renewal application and the annual summaries submitted during the most recent term of membership. The review of a renewal shall follow the same procedures as the review for the initial application regarding compliance checks and EMS evaluations, except a general site visit by a representative of the department shall not be required.

(d) The commissioner shall make a determination on the ESP renewal application based on the following:

- (1) The EMS must continue to meet the standards in section 11 of this rule.
- (2) Review of the annual summaries submitted during the previous membership term.
- (3) Successful coordination with a member of senior management to set at least one (1) environmental improvement initiative and associated goals for the next year of membership.
- (4) Information provided by U.S. EPA if the entity has also applied for membership in NEPT.
- (5) Compliance audits conducted by:
 - (A) the department;
 - (B) the U.S. EPA;
 - (C) other state offices; and
 - (D) other federal agencies;as appropriate.
- (6) Other information, including the following:
 - (A) Compliance information obtained from department staff.
 - (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(Solid Waste Management Board; 329 IAC 18-1-6)

329 IAC 18-1-7 Renewal of CLEAN membership

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3

Affected: IC 13-15; IC 13-19

Sec. 7. (a) To renew CLEAN membership, a member of senior management shall submit the third annual summary of the previous membership term:

- (1) to the department within sixty (60) days after the third annual anniversary of the date the previous membership term began;
- (2) to clearly indicate the intention to renew membership; and
- (3) including five (5) objectives, targets, and action plans for the next three (3) year term.

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) The department shall review the annual summaries and five (5) objectives, targets, and action plans submitted during the most recent term of membership. The review of this information shall follow the same procedures as the review for the initial application regarding compliance checks and EMS evaluations, except a general site visit by a representative of the department shall not be required.

(d) The commissioner shall make a decision on the CLEAN renewal application based on the following:

- (1) The EMS must continue to meet the standards in section 11 of this rule.
- (2) Review of the annual summaries submitted during the previous membership term.
- (3) Successful coordination with a member of senior management to identify at least five (5) environmental improvement initiatives and associated goals for the next three (3) year term of membership.
- (4) Compliance audits conducted by:
 - (A) the department;
 - (B) the U.S. EPA;
 - (C) other state offices; and
 - (D) other federal agencies;as appropriate.
- (5) Other information, including the following:
 - (A) Compliance information obtained from department staff.
 - (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(e) If the entity does not request a renewal with the third annual summary, then membership in CLEAN expires upon receipt by the department of the third annual summary. (*Solid Waste Management Board; 329 IAC 18-1-7*)

329 IAC 18-1-8 Revocation

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3

Affected: IC 13-15; IC 13-19

Sec. 8. (a) The commissioner shall revoke membership in ESP or CLEAN if the entity has not substantially complied with any of the following:

- (1) The standards of environmental compliance described in section 10 of this rule.
- (2) The requirement to make sufficient progress towards attaining the environmental initiatives identified and agreed upon at the time of application

and submittal of the annual summaries.

(3) The requirement to maintain an approved EMS as required for membership.

(4) The prohibition against knowingly submitting false information:

(A) on the application;

(B) in the annual summary;

(C) during a site visit or evaluation by the department; or

(D) during an independent audit.

(b) The commissioner may revoke the membership in ESP or CLEAN if the entity has not substantially complied with any of the following:

(1) The ESP or CLEAN program requirements in this article, as applicable.

(2) Federal, state, or local environmental laws, rules, and regulations.

(c) A determination by the commissioner to revoke a membership under subsection (b) may be based upon the following:

(1) Compliance information obtained from department staff.

(2) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(d) If the commissioner determines that a situation shall or may warrant revocation of membership based on subsection (a) or (b), the following applies:

(1) The commissioner shall notify the entity in writing:

(A) of any potential deficiencies found; and

(B) that the commissioner is considering removing the entity from the program.

(2) The notice shall:

(A) state that the commissioner may consider removing the entity from the program after the response time period provided to the member;

(B) identify the potential deficiencies; and

(C) provide the entity with thirty (30) days to respond.

(3) Within thirty (30) days after the end of the time period provided to the member, the commissioner shall consider the response and determine if the situation warrants revocation of membership.

(e) An entity whose membership has been revoked may reapply under section 4 of this rule at any time twelve (12) months after the revocation.

(f) Revocation of memberships shall be posted on the department website for the duration of the current application period.

(g) Immediately upon revocation, all member incentives and regulatory benefits afforded to the member of ESP or CLEAN shall be revoked and the entity is subject to current and applicable regulatory requirements. *(Solid Waste Management Board; 329 IAC 18-1-8)*

329 IAC 18-1-9 Transfers

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 9. Membership in ESP or CLEAN may be transferred to another entity at the same geographic location provided:

- (1) the department is notified within ninety (90) days of the:**
 - (A) change in ownership or management; and**
 - (B) intent to maintain membership; and**
- (2) senior management commits to:**
 - (A) fulfilling the previous member's commitments; and**
 - (B) the requirements of the program for the remainder of the membership term by signing an updated membership application.**

(Solid Waste Management Board; 329 IAC 18-1-9)

329 IAC 18-1-10 Standards of environmental compliance

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 10. (a) To be accepted into ESP or CLEAN, a member of senior management of the entity shall submit a certification with the application to the department certifying that, based on information and belief after reasonable inquiry, the entity is currently in compliance with all applicable local, state, and federal environmental laws, rules, and regulations.

(b) The department shall:

- (1) review the administrative, civil, and criminal environmental compliance and enforcement history of the entity in order to determine if the entity satisfies the required standard of substantial environmental compliance;**
- (2) consider all applicable environmental compliance and enforcement criteria, including the criteria in subsections (c) and (d) in determining whether or not an entity has achieved substantial environmental compliance; and**
- (3) post the organizational name and location for all new and renewal applications on the department website within fourteen (14) days of the close of each application submission round.**

(c) The following criteria shall prevent acceptance of an entity into the ESP or CLEAN:

- (1) Corporate criminal conviction or guilty plea for environmentally-related violations of criminal laws involving the entity or an officer of the entity within the past five (5) years.**
- (2) Criminal conviction or plea of employee at the entity for environmentally-related violations of criminal laws within the past five (5) years.**

(d) The existence of one (1) or more of the following criteria may prevent acceptance of an entity into ESP or CLEAN:

- (1) Ongoing criminal investigation or prosecution of the entity, or an officer or**

employee of the entity, for a violation of environmental law.

(2) Three (3) or more significant violations at the entity in the past three (3) years.

(3) Unresolved or unaddressed significant noncompliance or significant violations.

(4) Planned, but not yet filed, judicial or administrative action, by U.S. EPA or the department, against the entity.

(5) Ongoing U.S. EPA or department-initiated litigation against the entity.

(6) A situation where an entity is not in compliance with the schedule and terms of an order or decree issued by:

(A) U.S. EPA; or

(B) the department.

(7) A history of significant environmental problems or a pattern of noncompliance at the entity or at other affiliated entities under the same ownership or control.

(Solid Waste Management Board; 329 IAC 18-1-10)

329 IAC 18-1-11 Environmental management system

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3

Affected: IC 13-15; IC 13-19

Sec. 11. (a) An approved EMS must be implemented by the entity before acceptance of an entity into ESP or CLEAN.

(b) An EMS that meets the criteria for ESP and CLEAN must, at a minimum, include the following:

(1) Evidence of senior management support, commitment, and approval provided through management review of records, employee interviews, or signatory reference to the applicant's environmental policy.

(2) A written environmental policy directed toward the following:

(A) Compliance.

(B) Pollution prevention.

(C) Continuous improvement.

(3) For CLEAN members, the environmental policy must also address sharing environmental decisions and performance information with the community.

(4) Identification of the environmental aspects at the entity.

(5) Prioritization of the environmental aspects and a determination of those aspects deemed significant by the entity considering, at the minimum, environmental impacts and applicable laws, rules, and regulations.

(6) Established priorities and environmental objectives and targets for the following:

(A) Continuous improvement in environmental performance.

(B) Ensuring compliance with applicable environmental laws, rules, regulations, and permit conditions.

(7) An established community outreach mechanism that includes the following:

(A) Identifying and responding to community concerns.

- (B) Informing the community of important matters that affect the community.
 - (C) Reporting on the EMS, including, at a minimum, reporting to the public on the environmental policy and significant aspects.
 - (D) Through the annual summary, reporting on the environmental improvement initiatives, including progress towards the most recent environmental improvement initiatives identified in the application or annual summary.
 - (8) Incorporation of environmental and pollution prevention planning in the development of new products, processes, and services and modifications of existing processes.
 - (9) Evidence of clear responsibility by the entity for the following:
 - (A) Implementation, training, monitoring, EMS maintenance, and taking corrective action.
 - (B) Ensuring compliance with applicable environmental laws, regulations, and permit conditions.
 - (10) Documentation of the implementation procedures and the results of implementation.
 - (11) Appropriately written EMS procedures to include documented plans, records, and procedures as needed for successful implementation of an EMS as defined in 329 IAC 18-1-2(7).
 - (12) An annual evaluation of the EMS with written results provided to senior management and affected employees.
- (c) For CLEAN members, the environmental policy must be adopted through an executive order, resolution, or ordinance.
- (d) The department shall determine if the EMS meets the criteria in subsection (b).
- (e) A representative of the department shall perform an on-site review, evaluation, and verification of the EMS if, within twelve (12) months of the application submittal, the EMS has not been:
- (1) audited by an independent party; or
 - (2) registered pursuant to a recognized certification standard.
- (Solid Waste Management Board; 329 IAC 18-1-11)*

329 IAC 18-1-12 Continuous environmental improvement

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3

Affected: IC 13-15; IC 13-19

Sec. 12. (a) In coordination with the department, a member of senior management shall identify continuous environmental improvement initiatives for the appropriate program, as follows:

- (1) For ESP, a member of senior management shall identify three (3) continuous environmental improvement initiatives for each membership term. One (1)

initiative shall be identified at the time of the initial or renewal application and the remaining initiatives shall be identified each year at the time the annual summary is submitted to the department.

(2) For CLEAN, a member of senior management shall identify five (5) continuous environmental improvement initiatives for the three (3) year membership term.

(b) Entities accepted into ESP or CLEAN shall:

(1) maintain records that describe and track the actions taken toward achievement of the environmental improvement initiatives; and

(2) submit an annual summary in accordance with section 13 or 14 of this rule, as applicable, documenting progress toward the environmental improvement initiatives for that year.

(c) Entities accepted into ESP or CLEAN shall demonstrate continuous environmental improvement by the following:

(1) Conducting periodic pollution prevention or environmental improvement assessments that identify opportunities for reducing pollution and eliminating waste at the entity.

(2) Identifying, obtaining approval for, and implementing environmental improvement initiatives in coordination with the department that:

(A) include objectives and targets beyond current legal requirements; and

(B) as applicable, specify the:

(i) environmental media;

(ii) types of pollution to be prevented or reduced;

(iii) implementation activities; and

(iv) projected time frames.

(3) Reporting on the activities undertaken toward implementation of the initiatives identified with the department.

(Solid Waste Management Board; 329 IAC 18-1-12)

329 IAC 18-1-13 Annual summary for ESP members

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3

Affected: IC 13-15; IC 13-19

Sec. 13. (a) Entities accepted into ESP shall submit an annual summary on a form provided by the department or an equivalent form documenting the following:

(1) Progress toward the objectives and targets identified for the environmental improvement initiative for that year.

(2) Results obtained from achieving the environmental improvement initiative objectives and targets, if applicable.

(3) An annual review of the EMS by the entity.

(b) If the entity has not attained the objectives and targets associated with an environmental improvement initiative, a member of senior management shall provide the following:

- (1) Verification of continued progress toward the objectives and targets.**
- (2) A description of the reason the objectives and targets have not been attained.**

(c) Each annual summary must include identification of the environmental improvement initiative for the next year, unless the entity is terminating membership in ESP.

(d) The annual summary shall:

- (1) cover the twelve (12) month calendar year;**
- (2) be submitted to the department for each year by April 1 of the following year; and**
- (3) be submitted for each calendar year in which the entity has been a member for at least three (3) full months.**

(e) An annual summary submitted to U.S. EPA as a requirement of being a member of NEPT shall satisfy the requirement for an annual summary for ESP members. (*Solid Waste Management Board; 329 IAC 18-1-13*)

329 IAC 18-1-14 Annual summary for CLEAN members

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3

Affected: IC 13-15; IC 13-19

Sec. 14. (a) Entities accepted into CLEAN shall submit an annual summary on a form provided by the department or an equivalent form documenting the following:

- (1) Progress toward the objectives and targets identified for the five (5) environmental improvement initiatives.**
- (2) Results obtained from achieving the environmental improvement initiative objectives and targets, if applicable.**
- (3) An annual review of the EMS by the entity.**

(b) If the entity has not attained the objectives and targets associated with an environmental improvement initiative at the time the third annual summary is submitted, a member of senior management shall provide a description of the reason the objectives and targets have not been attained.

(c) The annual summary shall be submitted to the department sixty (60) days after the annual anniversary of the date the previous membership term began. (*Solid Waste Management Board; 329 IAC 18-1-14*)

2a.